



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
MERLIN ADLER, et al.)

Appearances:

For Appellants: Norm Youngs
Your Heritage Protection Association

For Respondent: Kendall E. Kinyon and
Gary M. **Jerrit**
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Merlin Adler, et al., against proposed assessments of personal income tax and penalties in the total amounts and for the years as follows:

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<u>Appellants</u>	<u>Year(s)</u>	<u>Proposed Tax</u>	<u>Assessments Penalties</u>
Merlin Adler	1 980	\$ 958.00	\$ 526.90
Roselia Ambriz	1980	388.00	2' 13.40
Faye D. Anderson	1980	841.00	462.55
John R. Atfield	1978	1,369.00	6134.50
	1980	1,355.00	6136.86
Robert H. Bartle	1980	2,173.00	1,195.15
Thomas A. Bodine	1979	1,651.00	825.50
	1980	1,751.00	963.05
John A. Bogstad	1980	1,399.00	769.45
Keith J. Bohnert	1979	1,244.00	622.00
	1980	1,267.00	696.85
Leilani Bohnert	1980	259.00	129.50
Mario Boucher	1979	734.00	403.70
James H. Brady	1980	1,707.00	938.85
Gregory and Wanda Callow	1978	279.72	--
Gregory Callow	1979	1,992.00	1,095.00
Wanda Callow	1979	390.00	214.50
Richard G. Campbell	1979	1,563.00	859.65
Beverly Clarke	1979	1,860.00	1,141.56
Randall L. Clay	1979	3,224.00	1' 881.16
Michael G. Cook	1979	2,091.00	1,150.05
	1980	2,295.00	1,262.25
Dan L. Dinsmore	1979	1,563.00	781.50
Albert Elliot	1979	698.00	349.00
Earl W. Evans	1979	557.00	341.85
Harold E. Good	1979	1,684.00	842.00

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<u>Appellants</u>	<u>Year(s)</u>	<u>Proposed Tax</u>	<u>Assessments Penalties</u>
Robert L. Hendricks	1980	\$1,498.00	\$ 823.90
Eugene T. Holding	1979	2,102.00	1,051.00
Michael J. Hutchens	1978	790.35	450.16
	1979	172.00	105.56
John A. Idtensohn	1979	1,090.00	545.00
David G. Jones	1979	2,344.00	1,172.00
George V. Kildren	1979	1,266.00	633.00
Barry H. La Monda	1 9 7 9	1,200.00	600.00
Richard A. Langseth	1979	1,464.00	805.00
Don E. Lopez	1980	528.00	264.00
Frank Lum	1 9 7 9	991.00	49' 5.50
James D. McCambridge	1979	1,651.00	825.50
Barney P. McCabe	1978	739.14	387.00
Lytho L. McInelly	1979	2,630.00	1,315.00
Darryl C. Merritt	1978	1,280.45	554.52
	1979	1,618.00	658.17
Nickie L. Michau	1979	1,530.00	765.00
Charles Miller	1979	2,663.00	1,331.50
Virginia H. Minadeo	1980	908.00	499.40
David Morgan	1979	1,860.00	930.00
Dennis A. Morgan	1979,	362.00	181.00
Jerry R. Morgan	1979	2,927.00	1,796.42
Jeremy Myer	1979	903.00	' 451.50
Eugene M. Nekrassoff	1979	557.00	341.85
Vernit E. Nelson	1979	369.00	184.50

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<u>Appellants</u>	<u>Year(s)</u>	<u>Proposed Tax</u>	<u>Assessments Penalties</u>
Jessie V. Nickolson	1979	\$1,123.00	\$ 645.83
	1980	1,102.00	606.10
Edward J. Oldenburg	197.9	3,092.00	1,546.00
Richard E. Owens	1979	1,200.00	600.00
Frank A. Palminteri	1978	110.00	60.50
	1979	121.00	148.59
	1979	1,167.00	641.85
Bernard D. Pasqualini	1979	2,718.00	1,359.00
Rebecca Perez	1.979	453.00	226.50
Edward Alvin Perry	1980	1,008.00	504.00
Gary L. Phillips	1979	734.00	367.00
Edward J. Sarvis	1978	2,678.48	1,643.60
Denise I. Simms	1973	671.00	335.50
George J. Simon	1979	773.00	474.42
Melvin R. Skidmore	1,979	1,167.00	583.50
Donald R. Slate	1979	662.00	331.00
	1980	1,454.00	727.00
Leroy E. Steele	1979	1,167.00	711.73
Robert E. Stegall	1979	903.00	451.50
Dwight L. Stilson	1979	773.00	386.50
Michael C. Stirens	1979	1,354.00	677.00
Leland R. Thomas	1979	1,332.00	666.00
Louis M. Tibaldo	1979	1,134.00	567.00
Thomas Trentacoste	1979	573.00	286.50
	1980	751.00	413.05
Richard T. Urban	1980	1,223.00	672.65

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<u>Appellants</u>	<u>Year(s)</u>	<u>Proposed - Tax -</u>	<u>Assessments Penalties</u>
Adeen D. Wade	1979	\$ 328.00	\$ 164.00.
Curtis Wainuskis	1979	991.00	495.50
Gary Webb	1980	1,300.00	715.00
Victor L. Weeks	1979	525.00	262.50
George T. Whedbee	1979	1,398.00	699.00
Grady Whitener	1979	1,453.00	891.76
	1980	3,035.00	1,669.25
Harry Thomas Williams	1979	1,398.00	699.00
Edward C. Wood, Jr.	1979	286.00	113.50
Taffy A. Woods	1979	1,057.00	528.50
Jack Wright	1979	485.00	242.50

The subject appellants did not file California personal income tax returns and take the position that they are not taxpayers and do not owe any tax. When they refused to file returns, respondent issued notices of proposed assessment based upon information received from the California Employment Development Department. The proposed assessments also included various penalties, including those for failure to file a return and for failure to file after notice and demand.

It is well settled that respondent's determinations of tax are presumptively correct, and appellants bear the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) No such proof has been presented here. It appears that all of the issues raised herein were reviewed in-detail in the Appeals of Fred R. Dauberger, et al., decided by this board on March 31, 1982, and we conclude that the Dauberger decision is determinative of these appeals. In that decision, we found no merit in the contentions advanced by the taxpayers.

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On the basis of **the** evidence before us, we can only conclude that respondent correctly computed appellants tax liability, and that the imposition of penalties was fully justified. Respondent's action in these matters will, therefore, be sustained.

Finally, we note that several appellants in the present matter, i.e., Roselia **Ambriz**, Faye D. Anderson, Robert H. Bartle, John A. **Bogstad**, James H. Brady, Beverly Clarke, Robert L. Hendricks, Barney P. McCabe, Virginia H. Minadeo, Jerry R. Morgan, Frank A. Palminteri, Edward J. Sarvis, **George J.** Simon, Richard T. Urban, and Gary Webb, have previously brought appeals before this **board in which** they raised the same frivolous arguments **rejected here**. As we stated in the Appeals of Robert R. Aboltin, Jr., et al., decided on 'June 29, 1982, "[t]o pursue an appeal under such circumstances can only be construed as an attempt to obstruct and delay the appellate review process." We find that the aforementioned fifteen appellants have instituted and pursued their proceedings merely for the purpose of **delay**. Accordingly, pursuant to Revenue and Taxation Code section 19414, ^{1/} a penalty in the amount of five hundred dollars (\$500) shall be imposed against each of them.

1/ Section 19414, provides as folibws:

Whenever it appears to the State Board of Equalization or any court of record of this state that proceedings before it under this part have been instituted by the taxpayer merely for delay, a penalty. in an amount not in excess of five hundred dollars (\$500) shall be imposed. Any penalty so imposed shall be paid upon notice and demand from the Franchise Tax Board and shall be collected as a tax.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of the previously listed appellants **against** proposed assessments of personal income tax and penalties in the amounts and for the years **set** forth in the opinion, be and the same is hereby sustained, and that the \$500 delay penalty under section 19414 be imposed against each of the fifteen appellants named in the opinion, and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 5th day of April , 1983, by the State Board of Equalization, with Board **Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman
--Conway II. Collis , Member
Ernest J. Dronenburg, Jr. , Member
Richard Nevins , Member
Walter Harvey* , Member

*For Kenneth Cory, per Government Code Section 7.9,